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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 18

M. J. PUFAHL, AS RECEIVER OF THE AUSTIN NATIONAL BANK OF CHICAGO, PETITIONER,

vs.

ESTATE OF ELVIRA J. PARKS, DECEASED

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE FIRST DISTRICT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED MARCH 27, 1936.

CERTIORARI GRANTED APRIL 27, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No.

M. J. PUFAHL, AS RECEIVER OF THE AUSTIN NATIONAL BANK OF CHICAGO, PETITIONER,

vs.

ESTATE OF ELVIRA J. PARKS, DECEASED

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE FIRST DISTRICT OF THE STATE OF ILLINOIS

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[fol. 1] [Caption omitted]

[fol. 2]

IN PROBATE COURT OF COOK COUNTY

Estate of ELVIRA J. PARKS

to

M. J. PUFAHL, Receiver of the Austin National Bank of Chicago

ASSESSMENT AGAINST EXECUTORS

On Account of assessment against twelve (12) shares of stock held by the estate of Elvira J. Parks.

Assessment	$1200.00
Interest to 8-11-33	127.17
	$1327.17 with interest

to date of allowance of the claim.

[fol. 3] IN PROBATE COURT OF COOK COUNTY

NOTICE OF ASSESSMENT

Office of Receiver, The Austin National Bank of Chicago, Ill.

Chicago, Ill., May 21, 1931.

You will please take notice, That the Comptroller of the Currency has on May 21, 1931, levied an assessment upon the stockholders of the Austin National Bank of Chicago, Ill. of the par value of each and every share, payable at the office of the Receiver on or before June 29, 1931. The Receiver is, however, authorized by the Comptroller to grant an extension, without interest to shareholders who pay 25 per cent of the assessment on or before that date, and who will give a written obligation, satisfactorily guaranteed, to pay 25 per cent additional on or before July 29, 1931, 25 per cent additional on or before August 29, 1931, and the remaining 25 per cent on or before September 29, 1931.

You are therefore required to pay the assessment on the — shares of Stock standing in your name in accordance with the foregoing order and this notice. Your prompt compliance will be a great benefit to creditors of this trust and advance materially its early liquidation.

M. J. Pufahl, Receiver The Austin National Bank of Chicago, Ill.

[fol. 4] IN PROBATE COURT OF COOK COUNTY

Comptroller of Currency
Ed. 300. Dec. 1-23.
Form 2428.

ASSESSMENT UPON SHAREHOLDERS

Treasury Department,

Office of the Comptroller of Currency

Washington, May 21, 1931.

No. 10337

In the Matter of THE AUSTIN NATIONAL BANK of Chicago, Ill.

To all whom it may concern:

Whereas, upon a proper accounting by the Receiver heretofore appointed to collect the assets of "The Austin National Bank of Chicago," Chicago, Ill., and upon a valuation of the uncollected assets remaining in his hands, it appears to my satisfaction that in order to pay the debts of such association it is necessary to enforce the individual liability of the stockholders therefor to the extent hereafter mentioned, as prescribed by Section 5151 and 5234 of the Revised Statutes of the United States, 1 c 156, Act of June 30, 1876, and Section 23, Act approved December 23, 1913, known as Federal Reserve Act.

Now, therefore, by virtue of the authority vested in me by law, I do hereby make an assessment, and requisition upon the shareholders of the said "The Austin National Bank of Chicago," for two hundred fifty thousand ($250,000) dollars to be paid by them on or before the 29th day

of June, 1931, and I hereby make demand upon each and every one of them for the par value of each and every share of the capital stock of said association held or owned by them, respectively, at the time of its failure; and I hereby direct M. J. Pufahl, the Receiver heretofore appointed to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders.

In witness whereof I have thereto set my hand and caused my seal of office to be affixed to these presents, at the City of Washington, in the District of Columbia, the twenty-first day of May A. D. 1931.

F. G. Awalt, Acting Comptroller of the Currency.
(Seal.)

[fol. 5] August 7, 1933.

I hereby certify that the attached is a true and correct copy of notice of assessment upon shareholders of the Austin National Bank of Chicago, Illinois, made by F. G. Awalt, Acting Comptroller of the Currency, under date of May 21, 1931 in the sum of Two Hundred Fifty Thousand Dollars.

M. J. Pufahl.

Subscribed and sworn to before me this 7th day of August, 1933. Flornece W. Bergling, Notary Public, Cook County, Illinois. (Seal.)

[fol. 6] In Probate Court of Cook County

Claim Against Estate of Elvira J. Parks

M. J. Pufahl, Receiver of the Austin National Bank of Chicago, being duly sworn deposes and says that the annexed claim against the estate of Elvira J. Parks, deceased, is just and unpaid, after allowing for all just credits, and that the said M. J. Pufahl, Receiver of the Austin National Bank of Chicago, has no other claim against said estate.

M. J. Pufahl.

Subscribed and sworn to before me this 12 day of August, A. D. 1933. Mitchell C. Robin, Clerk of the Probate Court, Notary Public.

[Endorsed:] Pd. 2.25. Doc. 271, page 136. File 134337. Claim No. 2. Estate of Elvira J. Parks. Claim of M. J. Pufahl, Receiver of the Austin National Bank of Chicago. $1,327.17. Filed August 12th, A. D. 1933. Mitchell C. Robin, Clerk. Class No. —. Allowed for $—. Disallowed Jan. 13, A. D. 1934. John F. O'Connell, Judge. Cont'd 11/17/10. Cont'd 12/2/11 A. M. Cont'd 12-18-11 A. M. Cont'd 12/29 at 2 P. M. Cont'd 1-3-2 P. M. Glenn, Schwartz, Real & Browning, 134 South LaSalle St., Dearborn 3700. Appeal prayed and allowed—20 days—Bond, $250.00. P. W. Huston, Ex.

[fol. 7] IN PROBATE COURT OF COOK COUNTY

In the Matter of the Estate of ELVIRA J. PARKS, Deceased

ORDER DISALLOWING CLAIM—Jan. 13, 1934

The claim of M. J. Pufahl, receiver of the Austin National Bank of Chicago, filed against the estate of Elvira J. Parks, deceased having been reached for adjustment and the court being fully advised in the premises, and having heard the testimony adduced it is Ordered that said claim be disallowed against said estate.

From which order M. J. Pufahl, not individually but as Receiver of the Austin National Bank of Chicago prays an appeal to the Circuit Court of Cook County, and the same allowed upon giving bond in the sum of $250.00 to be approved by this Court within 20 days from this date.

[fol. 8] STATE OF ILLINOIS,
County of Cook, ss:

I, Mitchell C. Robin, Clerk of the Probate Court of Cook County, in the State aforesaid, do hereby certify that the within is a true transcript of the proceedings had before said Court in the matter of the estate of Elvira J. Parks, dec'd, entered herein on the 22 day of Jany., A. D. 1934.

In witness whereof, I have hereunto set my hand and affixed the seal of said Probate Court at Chicago, in said County, this 9th day of February, A. D. 1934.

Mitchell C. Robin, Clerk.

[fol. 9] Bond on appeal for $250.00, approved and filed Jan. 22, 1934, omitted in printing.

[fol. 10] IN PROBATE COURT OF COOK COUNTY

Doc. 271, Page 136, File 134337

In the Matter of the Estate of ELVIRA J. PARKS, Deceased

ORDER APPROVING BOND—Jan. 22, 1934

This cause coming on to be heard on motion of Glenn, Schwartz, Real & Browning, attorneys for M. J. Pufahl, as Receiver of the Austin National Bank of Chicago, claimant, for the approval of the appeal bond of said M. J. Pufahl, as receiver, and the Court having examined said bond doth find that it is properly executed by the claimant and a surety company qualified to do business in this Court.

It is, therefore, ordered, adjudged and decreed that said bond be, and the same is hereby approved and filed in this cause.

Enter.

John F. O'Connell, Judge.

Dated January 22, 1934.

Clerk's certificate to foregoing paper omitted in printing.

[fols. 11 & 12] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 13] IN CIRCUIT COURT OF COOK COUNTY

No. 34C 1758

In Re Estate of ELVIRA J. PARKS, Deceased

SPECIAL FINDINGS OF FACT, PROPOSITIONS AT LAW, AND JUDGMENT—Jan. 14, 1935

And now on this 14th day of January A. D. 1935 come the parties hereto by their attorneys, pursuant to a continuance of said cause from the 8th day of January, 1935; and this cause coming on for the entry of special findings of fact and propositions at law and for the entry of judg-

ment; and this cause having been tried on appeal from the Probate Court of Cook County, Illinois, the issues herein joined having been submitted to the Court on stipulation of facts filed herein for trial without the intervention of a jury;

And the Court having read the stipulation of facts filed herein and heard the arguments of counsel and being now fully advised in the premises, finds as special findings of fact:

1. That Elvira J. Parks at the time of her death on March 20, 1928, and for a long time prior thereto, was the owner [fol. 14] and holder of Twelve (12) shares of capital stock of the Austin National Bank of Chicago of the par value of One Hundred Dollars ($100.00) per share;

2. That Philip W. Huston and Frank M. Pray as Executors of the Estate of Elvira J. Parks, deceased, are now the owners and holders of twelve (12) shares of the capital stock of the Austin National Bank of Chicago, of the par value of One Hundred Dollars ($100.00) each.

And the Court further finds as propositions at Law:

1. That by virtue of the provisions of Section 5152 of the Revised Statutes of the United States of America (12 U. S. C. A. Section 66), the said Philip W. Huston and Frank M. Pray, as Executors of the Estate of Elvira J. Parks, deceased, are liable to the extent of the property and funds in their hands as such executors, to M. J. Pufahl, Receiver of the Austin National Bank of Chicago, in the sum of Twelve Hundred Dollars ($1200.00) with interest thereon at the rate of five per centum (5%) per annum from the 29th day of June, 1931;

2. That by virtue of the provisions of Section 70 of the Act of the State of Illinois in regard to the administration of estates, in force July 1, 1872 as amended (Smith-Hurd Illinois revised Statutes, Chap. 3, Sec. 71) the liability of [fol. 15] the said Philip W. Huston and Frank M. Pray, as Executors of the Estate of Elvira J. Parks, deceased, to the said M. J. Pufahl, as Receiver of the Austin National Bank of Chicago, cannot be asserted against assets of the Estate of Elvira J. Parks, deceased, inventoried within one (1) year from the granting of letters testamentary, by a

claim filed against said estate in the Probate Court of Cook County, Illinois.

Therefore, it is considered and adjudged by the court that the claim of M. J. Pufahl, Receiver of the Austin National Bank of Chicago, be and it is hereby allowed against uninventoried assets of the Estate of Elvira J. Parks, deceased and that said claim be and it is hereby disallowed and rejected as a claim against assets of the Estate of Elvira J. Parks, deceased, inventoried within one (1) year from the granting of letters testamentary; and that judgment be entered for the defendants Philip W. Huston and Frank M. Pray, Executors of the Estate of Elvira J. Parks, deceased and against M. J. Pufahl, Receiver of the Austin National Bank of Chicago, claimant, for costs of this suit.

Enter.

Daniel P. Trude, Judge.

Dated January 14, 1935.

[fol. 16] In Circuit Court of Cook County

[Title omitted]

Notice of Appeal—Filed Feb. 1, 1935

To Castle, Williams, Long & McCarthy, 111 W. Washington Street, Chicago, Illinois:

Please take notice, That M. J. Pufahl, as Receiver of the Austin National Bank of Chicago, claimant in the above entitled cause, hereby appeals to the Appellate Court of Illinois, First District, from the judgment rendered and entered in this cause in the Circuit Court of Cook County, Illinois, on the 14th day of January, A. D. 1935, said judgment allowing the claim of said M. J. Pufahl, as Receiver of the Austin National Bank of Chicago, against the uninventoried assets of said estate, and disallowing and rejecting the claim against the assets of said estate generally.

Claimant prays that the judgment of the Circuit Court of Cook County, State of Illinois, be reversed insofar as it denies the allowance of the claim of said M. J. Pufahl,

as Receiver, against the assets of said estate generally, and that said claim be allowed against said estate.

Dated February 1, A. D. 1935.

Glenn, Schwartz, Real & Browning, Attorneys for Claimant.

Received copy of the above and foregoing notice this 1st day of February A. D. 1935.

Castle, Williams, Long & McCarthy.

Compared.

[fol. 17] IN CIRCUIT COURT OF COOK COUNTY

[Title omitted]

NOTICE OF FILING OF NOTICE OF APPEAL AND RECEIPT FOR COPY THEREOF—Filed Feb. 5, 1935

To Castle, Williams, Long & McCarthy, 111 W. Washington Street, Chicago, Attorneys for Philip W. Huston and Frank M. Pray, as Executors of the Estate of Elvira J. Parks, Deceased:

Please take notice, that on the 1st day of February A. D. 1935, we filed in the office of the Clerk of the Circuit Court of Cook County, Illinois, Notice of Appeal in the above entitled cause, and thereby perfected the appeal of M. J. Pufahl, as Receiver of the Austin National Bank, to the Appellate Court of Illinois, First District, from the judgment entered in the above proceedings on the 14th day of January 1935; a true copy of which said notice by which said appeal was perfected was heretofore served upon you on the first day of February A. D. 1935.

Glenn, Schwartz, Real & Browning, Attorneys for Appellant.

Received copy of foregoing notice and notice of appeal therein referred to, this 4th day of February A. D. 1935.

Castle, Williams, Long & McCarthy.

Compared.

[fol. 18] IN CIRCUIT COURT OF COOK COUNTY

[Title omitted]

STIPULATION OF FACTS—Filed Feb. 5, 1935

It is hereby stipulated by and between Philip W. Houston and Frank M. Pray, as Executors of the estate of Elvira J. Parks, deceased by their attorneys, Castle, Williams, Long & McCarthy, and M. J. Pufahl, Receiver of the Austin National Bank of Chicago claimant by Glenn, Schwartz, Real & Browning, his attorneys:

1. That for many years last past the Austin National Bank of Chicago has been a National Banking Association duly organized, incorporated and chartered under the laws of the United States, and having its place of business at Chicago, in Cook County, in the State of Illinois.

[fol. 19] 2. That on the 30th day of March A. D. 1931, the Comptroller of Currency of the United States declared and adjudged said Austin National Bank of Chicago, a National Banking Association, to be insolvent, and thereupon closed said bank and subsequently, on the 6th day of April A. D. 1931, the said M. J. Pufahl was appointed Receiver of said bank by the Comptroller of Currency of the United States of America, and said M. J. Pufahl thereupon qualified as such receiver and since the date of his appointment until the present time has been engaged in the liquidation of the assets of said bank.

3. That on the 21st day of May A. D. 1931, the Comptroller of Currency of the United States, in order to pay the debts of the Austin National Bank of Chicago (successor by change of name to the Austin National Bank) made an assessment upon all the stockholders of said bank equal to 100% of the par value of the stock of said bank owned by each of said stockholders including an assessment against the defendants, Philip W. Houston and Frank M. Pray, as Executors of the last will and testament of Elvira J. Parks, deceased, of 100% of the par value of the stock owned by said Philip W. Houston and Frank M. Pray, as such Executors, in the amount of Twelve Hundred Dollars ($1200.00), said assessment being in the sum of One Hundred Dollars ($100.00) per share on twelve

[fol. 20] (12) shares of the capital stock of said bank, and said Comptroller of Currency of the United States of America did then and there demand of all of said stockholders and of said Philip W. Houston and Frank M. Pray, as Executors, the payment of said stock assessment as aforesaid, together with interest at the rate of 5% per annum from the 29th day of June 1931; and said Executors received notice of all these facts, but have refused to pay M. J. Pufahl, as Receiver, the amount so due or any part thereof.

4. That the Comptroller of Currency of the United States of America on the 21st day of May, 1931, directed M. J. Pufahl, as Receiver of the Austin National Bank of Chicago, to take all necessary proceedings by suit or otherwise to enforce the assessment levied against the capital stock of said bank.

5. That said Elvira J. Parks died on the 20th day of March, 1928, and at the time of her death and for a long time prior thereto she was the holder and owner of twelve (12) shares of capital stock of the Austin National Bank of Chicago of the par value of One Hundred Dollars ($100) per share; that letters of Administration were issued by the Probate Court of Cook County, Illinois, to Philip W. Houston and Frank M. Pray on the 17th day of May, 1928, in a proceeding pending therein entitled, In the matter of the Estate of Elvira J. Parks, deceased, Docket No. 271, [fol. 21] Page 136, File 134337, and that an order of adjudication was entered in said proceeding on, to-wit, the 6th day of March, 1929. And it is further stipulated that an Inventory and Supplemental Inventory were filed in the Probate Court of Cook County within one (1) year after the date of issuance of Letters Testamentary, and that said estate is still open and there has been no final distribution.

6. That on the 1st day of September, 1933, said M. J. Pufahl, as Receiver of the Austin National Bank of Chicago, filed in the Office of the Clerk of the Probate Court of Cook County, Illinois his claim against the Estate of Elvira J. Parks, deceased, in the sum of $1327.17 said sum consisting of $1200 assessment and interest calculated at the rate of 5% to date of filing claim. Said claimant further prayed for interest from date of filing claim to date of allowance.

7. That the Comptroller of the Currency has issued his respective certificates certifying to the insolvency of the Austin National Bank of Chicago, the appointment of M. J. Pufahl, as Receiver of said Bank, and to the levying of an assessment upon all shareholders of said bank equal to the par value of each and every share of capital stock of said bank held by them.

Glenn, Schwartz, Real & Browning, Attorneys for M. J. Pufahl, as Receiver of the Austin National Bank of Chicago. Castle, William, Long & McCarthy, Attorneys for Philip W. Houston and Frank M. Pray, as Executors of the Estate of Elvira J. Parks, Deceased.

[fol. 22] I, the undersigned Judge of the Circuit Court of Cook County, State of Illinois, who presided at the trial of said cause, do hereby certify that the foregoing stipulation of Facts contains all the evidence introduced at the trial of the said cause before this Court.

Daniel P. Trude, Judge.

Feb. 5, 1935.

We hereby certify that we have examined the above and foregoing Stipulation of Facts and find the same to be true and correct.

Castle, William, Long & McCarthy, Attorneys for Estate of Elvira J. Parks, Deceased, Appellee.

[fol. 23] In Circuit Court of Cook County

[Title omitted]

Notice of Appearance—Filed Feb. 6, 1935

To Glenn, Schwartz, Real & Browning, 134 South LaSalle Street, Chicago, Illinois:

Please take notice that the defendant, Estate of Elvira J. Park, deceased, hereby enters its appearance in said cause:

Castle, Williams, Long & McCarthy, Attorneys for the Estate of Elvia J. Park, Deceased, Appellee.

Received a copy of the foregoing notice this 5th day of February, 1935.

Glenn, Schwartz, Real & Browning, Attorneys for M. J. Pufahl, Receiver of the Austin National Bank of Chicago, Appellant.

[fol. 24] Bond on appeal for $250.00, approved and filed Feb. 7, 1935, omitted in printing.

[fol. 25] In Circuit Court of Cook County

[Title omitted]

Order Approving Bond—Feb. 7. 1935

On motion of Glenn, Schwartz, Real & Browning, solicitors for M. J. Pufahl, as Receiver of the Austin National Bank of Chicago, claimant in the above entitled cause.

It is hereby ordered that the appeal bond of said M. J. Pufahl, as Receiver of the Austin National Bank of Chicago be and the same is hereby approved and filed in this cause, this 7th day of February 1935. It is further ordered that said bond operate as a supersedeas and that further distribution of the Estate of Elvira J. Parks, deceased, be stayed.

Daniel P. Trude, Judge.

Chicago, Feb. 7, 1935.

o. k.

[fol. 26] In Circuit Court of Cook County

[Title omitted]

Præcipe for Transcript of Record—Filed Feb. 7, 1935

To Honorable John E. Conroy, Clerk of said Court:

You will please prepare and include in the Transcript of the Record to be sent to the Appellate Court of Illinois, First District, upon the appeal of the claimant, M. J. Pu-

fahl, as Receiver of the Austin National Bank of Chicago, in the above entitled cause, the following:

1. Placita.
2. Stipulation of Facts, together with certificate of the court.
3. Transcript of Record from Probate Court.
4. Judgment Order.
5. Notice of Appeal.
6. Proof of service of notice of appeal.
7. Præcipe with receipt for service.

[fol. 27] 8. Appeal bond.

9. Order approving appeal bond.
10. Appearance of Estate of Elvira J. Parks, deceased.

Glenn, Schwartz, Real & Browning, Attorneys for Claimant, Appellant.

Due Service and receipt of copy of the within Præcipe is hereby admitted this 7th day of February A. D. 1935.

Castle, Williams, Long & McCarthy, Attorneys for Appellees.

[fol. 28] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 29-31] [Caption omitted]

[fol. 32] IN APPELLATE COURT OF ILLINOIS

38123

In Re ESTATE OF ELVIRA J. PARKS, Deceased

M. J. PUFAHL, as Receiver of the Austin National Bank of Chicago, Claimant Below, Appellant,

vs.

ESTATE OF ELVIRA J. PARKS, Deceased, Respondent Below, Appellee

Appeal from Cook Circuit

ORDER EXTENDING TIME—March 11, 1935

This day came appellant by his counsel and moved the Court to extend the time to and including March 30th, A. D.

1935, in which to file his abstracts and briefs in said cause as per reasons and affidavit filed herein. And the Court being fully advised in the premises doth order that said time be and the same is hereby so extended.

[fol. 33] IN APPELLATE COURT OF ILLINOIS

ORDER ASSIGNING CASE—March 15, 1935

On the Court's own motion it is ordered that the following numbered cases on the April Term Calendar, A. D. 1935, of said Court be and the same are hereby assigned to the Third Division Appellate Court for hearing and determination, to-wit:

38123: In Re Est. Elvira J. Parks, dec'd., v. Est. Elvira J. Parks, M. J. Pufahl, Receiver etc., et al., dec'd.

[fol. 34] IN APPELLATE COURT OF ILLINOIS

[Title omitted]

ORDER ALLOWING MOTION FOR LEAVE TO AMEND BRIEFS—April 10, 1935

This day came Appellant by his counsel and moved the Court for leave to amend his briefs heretofore filed herein in said cause on its face as follows: By striking out the words "in the funds" appearing in paragraph 1, line 4 on page 9, By correcting the word "curency" appearing in the second paragraph, line 6, page 15, to read "currency", By correcting the word "agaist" appearing on line 6, paragraph 2, page 18, to read "against", and by striking out the word "court" appearing at the end of line 7, par*garpah* 1, page 21, as per suggestions and affidavit filed herein. And the Court being fully advised in the premises doth order that said motion be and the same is hereby allowed.

[fol. 35] IN APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

[Title omitted]

MOTION OF APPELLANT TO TRANSFER CAUSE TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND REASONS IN SUPPORT THEREOF—Filed April 23, 1935

Now comes M. J. Pufahl, Receiver of the Austin National Bank, appellant herein, by Glenn, Schwartz, Real & Browning, his attorneys, and moves this Honorable "The Third Division of the Appellate Court, First District" to transfer the record in the above entitled cause to the Supreme Court of this State and in support of said motion states the following reasons:

1. That one of the errors assigned by the appellant raises a constitutional question.

2. That the Constitution of the United States vested in the Congress of the United States the power to create, regulate and liquidate National Banking Institutions and in accordance with that power Congress provided for liability against the Executors of the estate of a deceased stockholder upon the insolvency of the bank, and that said [fol. 36] liability is created by Sections 64 and 66, Title 12, U. S. C. A.

3. That the lower court allowed the claim of appellant against the Estate of Elvira J. Parks, deceased, but further held that said claim could not share in the inventoried assets of said estate, but could share only in the assets of said estate that had not been inventoried, for the reason that said claim had not been filed against said estate within one year after the issuance of Letters Testamentary therein, the decision of said court being based upon Section 70 of the Administration of Estates Act.

4. That Section 70 of the Administration of Estates Act is in contravention of the Constitution of the United States and the Acts of Congress passed in pursuance thereof, insofar as said Act purports to bar claims arising under Sections 64 and 66, Title 12, U. S. C. A., from sharing in the inventoried assets of an estate against which said claim is filed, when said claim accrues and is filed against said

estate subsequent to one year after the issuance of Letters Testamentary.

5. That the Supreme Court of the State of Illinois has exclusive jurisdiction to decide the constitutionality of Section 70 of the Administration of Estates Act, and that this court does not have jurisdiction to decide said question.

Appellant therefore moves for a transfer of this cause to the Supreme Court of the State of Illinois.

Glenn Schwartz Real & Browning, Attorneys for Appellant.

[fol. 37] STATE OF ILLINOIS,
County of Cook, ss:

Harold E. Baily, being first duly sworn, on oath deposes and states: That he is an attorney at law associated with the firm of Glenn, Schwartz, Real & Browning, attorneys for appellant; that said appellant desires to move this court for an order transferring the above entitled cause to the Supreme Court of this State, for the reason that a constitutional question is raised by the appellant and that this court does not have jurisdiction over the same.

Harold E. Baily.

Subscribed and sworn to before me this 19th day of April, A. D. 1935. (Sgd.) A. D. Tighe, Notary Public. (Seal.)

[fol. 38] IN APPELLATE COURT OF ILLINOIS

[Title omitted]

ORDER DENYING MOTION TO TRANSFER CAUSE—April 26, 1935

The Court having considered the motion of Appellant to transfer the above entitled cause to the Supreme Court of Illinois as per reasons and affidavit filed herein. And being now fully advised in the premises doth order that said motion be and the same is hereby denied.

[fol. 39] IN APPELLATE COURT OF ILLINOIS

[Title omitted]

ORDER OF SUBMISSION—May 1, 1935.

This cause having this day been reached in the call of the docket, and counsel desiring to argue the same, and the Court, not being fully advised in the premises, doth order that said cause be taken under advisement on brief filed and appellant's reply brief due May 9, 1935.

[fols. 40 & 41] IN APPELLATE COURT OF ILLINOIS

No. 38123

In the Matter of the Estate of ELVIRA J. PARKS, Deceased

M. J. PUFAHL, Receiver of the Austin National Bank of Chicago, Claimant Below, Appellant,

vs.

Estate of ELVIRA J. PARKS, *Deceased*, Respondent Below, Appellee

Appeal from Circuit Court of Cook County

JUDGMENT—Dec. 27, 1935

On this day came again the said parties, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Order and judgment of January 14th, A. D. 1935, aforesaid is there anything erroneous, vicious, or defective; and that in the record there is no error: therefore, it is considered by the Court that the order and judgment of January 14th, A. D. 1935, aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the

Court that the said Appellee recover of and from the said Appellant its costs, by it in this behalf expended, to be taxed, and to be paid in due course of Administration of said Receivership.

[fol. 42] In Appellate Court of Illinois, First District

[Title omitted]

Notice—Filed Jan. 7, 1936

To Castle, Williams & McCarthy, 111 W. Washington St.:

Please take notice, that on Wednesday, the 8th day of January, A. D. 1936, we shall appear at 10 o'clock a. m. before the Third Division, Appellate Court, First District of Illinois, and present the petition of appellant in the above entitled cause praying for a Certificate of Importance and leave to appeal to the Supreme Court of Illinois, and ask that the Court fix the time within which appeal bond, if any, [fol. 43] shall be filed, and the amount of said bond.

Glenn, Schwartz, Real & Browning, Attorneys for Appellant.

Received copy of above and foregoing notice and attached petition this 7th day of January, A. D. 1936.

Castle, Williams & McCarthy.

[fol. 44] In Appellate Court of Illinois, First District

[Title omitted]

Petition for Certificate of Importance and Appeal to Supreme Court—Filed Jan. 7, 1936

Now comes M. J. Pufahl, as Receiver of the Austin National Bank of Chicago, appellant, by Glenn, Schwartz, Real & Browning, his attorneys, and petitions this Honorable Court for leave to appeal from the judgment of affirmance by this Court in this cause to the Supreme Court of Illinois; petitions this Court to certify this cause by its Certificate of Importance to the Supreme Court of Illinois, to be passed upon by the Supreme Court, and shows unto the Court these reasons why the petition should be allowed:

1. That the construction and enforcement of the liability [fol. 45] created by a Federal Statute (Sections 64 and 66, Title 12, U. S. C. A.) is involved.

2. That the construction and validity of Section 71, Chapter 3, Illinois Revised Statutes of 1935 is impliedly involved in this suit.

3. That there are in excess of 15 national banking institutions in Chicago, Illinois, and many others throughout the entire State which are in process of liquidation; that assessments have been made against stockholders in each of these instances; that each of said institutions has at least one or more cases where the assessment was made against representatives of decedent's estates more than one year after granting of Letters; that each of said institutions and their stockholders are interested in the decision of the Court in this cause.

4. That there are now pending in the Probate Court of Cook County numerous suits where the identical questions as exist in this record are at issue, many of which involve in excess of $1,500.

Petitioner submits that this cause thereby involves questions of such importance on account of principal and collateral interest that it should be passed upon by the Supreme Court of Illinois.

Appellant therefore prays that this Court certify this cause to the Supreme Court of Illinois to be there passed upon; that leave to appeal be allowed to the Supreme Court, and that this Court fix the time within which appellant shall execute and file a sufficient appeal bond, if any, and the amount thereof.

M. J. Pufahl, as Receiver of the Austin National Bank, Appellant-Petitioner, by Glenn, Schwartz, Real & Browning, Attorneys for Petitioner.

[fol. 46] IN APPELLATE COURT OF ILLINOIS

[Title omitted]

ORDER DENYING MOTION FOR CERTIFICATE OF IMPORTANCE AND APPEAL—Jan. 8, 1936

The Court having considered the motion of Appellant for a Certificate of Importance and an Appeal to the Su-

preme Court of Illinois in said cause as per petition filed herein, and being now fully advised in the premises doth order that said motion be and the same is hereby denied.

[fol. 47] IN APPELLATE COURT OF ILLINOIS

ORDER IN RE PUBLICATION OF WRITTEN DECISION OF THIS COURT—Jan. 14, 1936

It is hereby ordered that the cases, the numbers and titles of which are given below, the written decisions of this Court filed the 27th day of December A. D. 1935, shall be published in full in the Appellate Court Reports.

And the decisions so filed which are not designated below shall be published by including an adequate abstract of such written decisions.

38123: Parks and Pufahl vs. Estate of Parks.

[fol. 48] IN APPELLATE COURT OF ILLINOIS

38123

In Re Estate of ELVIRA J. PARKS, Deceased,

M. J. PUFAHL, as Receiver of the Austin National Bank of Chicago, Claimant Below, Appellant,

v.

Estate of ELVIRA J. PARKS, Deceased, Respondent Below, Appellee

Appeal from Circuit Court Cook County

OPINION—Filed Dec. 27, 1935

MR. JUSTICE DENIS E. SULLIVAN Delivered the Opinion of the Court:

This is an appeal from a judgment entered in the Circuit Court of Cook County, denying the claim of M. J. Pufahl, as receiver of the Austin National Bank of Chicago, against Philip W. Huston also called Houston, and Frank M. Pray, as executors of the estate of Elvira J. Parks, deceased.

The cause of action arose out of an assessment by the comptroller of currency of the United States against all shareholders of the Austin National Bank of Chicago, to enforce the superadded liability of the shareholders, including Philip W. Huston and Frank M. Pray, as executors, who are the owners and holders of 12 shares of the capital stock of the Austin National Bank.

The Circuit Court found that Philip W. Huston and Frank M. Pray, as executors of the estate of Elvira J. Parks, deceased, were liable to M. J. Pufahl, as receiver, for the sum of $1200 plus interest, to the extent of the property and funds in their hands as such executors.

The Circuit Court further found that the claim did not accrue and was not filed in the Probate Court until after the one year period for filing claims had expired and that consequently, claimant was barred from sharing in the funds of the estate, except as to uninventoried assets. M. J. Pufahl, as receiver, appealed from the entire judgment. [fol. 49] The theory of M. J. Pufahl, as receiver, is that the liability of the executors of the estate of Elvira J. Parks, deceased, for the stock assessment levied against them as the owners and holders of 12 shares of stock, arises by virtue of Section 5152 of the Revised Statutes of the United States (12 U. S. C. A. Sec. 66) and binds them the same as the deceased would be bound if living, and is not such an ordinary claim as would be barred by Chapter 3, par. 71, Section 70, Illinois Revised Statutes, 1935.

It is further contended by claimant that section 71 of the Administration of Estates Act was not designed to bar a claim arising by virtue of the federal statute which was not absolute and which did not accrue until after the one year period for filing claims had expired.

Elvira J. Parks who owned these shares of stock in her life time, died March 20, 1928. Philip W. Huston and Frank M. Pray, as executors, are now the owners and holders of the 12 shares of capital stock of the Austin National Bank of Chicago at the par value of $100 each.

On the 30th day of March, 1931, the comptroller of currency of the United States declared and adjudged said Austin National Bank of Chicago to be insolvent and closed said bank. Subsequently, on April 6, 1931, M. J. Pufahl was appointed receiver of said bank by the comptroller of currency of the United States.

May 21, 1931, the comptroller of currency in order to pay the debts of the Austin National Bank of Chicago made an assessment upon all the stockholders of said bank equal to 100 per cent of the par value of the stock of said bank owned by said stockholders, including an assessment of $1200 against the defendants, Philip W. Huston and Frank M. Pray, as executors of the last will and testament of Elvira J. Parks, and the said comptroller of currency de- [fol. 50] manded of the said Philip W. Huston and Frank M. Pray the payment of said stock assessment as aforesaid, together with interest at the rate of 5% per annum from June 29, 1931, and the said executors refused to pay M. J. Pufahl, as receiver, the amount due or any part thereof.

On May 21, 1931, the said comptroller of currency directed M. J. Pufahl, as receiver of the Austin National Bank of Chicago, to take the necessary proceedings to enforce the assessment levied against the capital stock of said bank.

On May 17, 1928, letters of administration were issued to Philip W. Huston and Frank M. Pray by the Probate Court, in a proceeding pending therein entitled, "In the matter of the Estate of Elvira J. Parks, deceased". It was stipulated that an inventory and supplemental inventory were filed in the Probate Court of Cook County one year from the date of issuance of letters testamentary, and that the said estate is still open and there has been no final distribution.

On September 1, 1933, M. J. Pufahl, as receiver, filed his claim against the Estate of Elvira J. Parks in the Probate Court for the sum of $1327.17, being $1200 assessment plus interest at the rate of 5 per cent to date of filing said claim.

The only point of controversy involved here is whether the comptroller of the currency by levying the assessment against the stockholders is in any different position than any other creditors filing their claims against the estate.

Chapter 3, par. 71, section 70 of the Illinois Revised Statutes, 1935, which is applicable to this question, reads as follows:

"All claims and demands of whatever class not exhibited to the Court within one year from the granting of letters as aforesaid shall be forever barred as to property and estate of the deceased which has been inventoried or ac-

counted for by the executor or administrator * * * all claims not exhibited to the court prior to the date so fixed shall be forever barred as to the property and estate listed in such inventory, and the amount remaining due on all [fol. 51] claims exhibited to the court on or prior to the day so fixed upon as aforesaid, including those filed within one year from the granting of letters, shall be paid *pro rata* out of such subsequently inventoried estate. * * *"

It is contended by the claimant that the Federal Statute (Section 66 of Title 12, United States Code Annotated) creates a special class of claim which is charged as a lien upon the estate of the deceased stockholder, and which is not governed by the laws of Illinois relative to the administration of estates of decedents.

It may well be admitted that the validity of the claim cannot be affected in any way by the laws of the state, but as to the method of its enforcement, it is governed by the practice prescribed by the state laws, the same as any other claimant. We are inclined to believe this exact question was settled by the Supreme Court of the United States on February 4, 1933, in the case of Forrest v. Jack, 294 U. S. Rep. 159, on page 163 referring to the said section 66 of Title 12, United States Code Annotated, wherein the court said:

"In the absence of federal enactments relating to procedure for enforcement of the liability imposed by Section 66, collection is to be made in accordance with state laws governing claims against estates of deceased persons, at least to the extent that such laws are not inconsistent with enforcement of the liability imposed by national authority."

and again the court said:

"There is no suggestion that the laws of the State of Utah discriminate against or are inadequate for the just and convenient enforcement of liability imposed."

In other words, this liability which was created by the comptroller of the currency more than one year after the time when claims could be filed under the law of Illinois, is treated the same as any other claim and we think rightfully so. No discrimination is made against it nor can we see any reason why it should be preferred over other claims.

No exception in its favor is made in any law and we do not [fol. 52] see why we should attempt to make one.

We are of the opinion that the finding of the Circuit Court is correct and its order and judgment are, therefore, affirmed.

Order and judgment affirmed.

Hall, P. J., and Hebil, J., concur.

[fol. 53 & 54] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 55] IN APPELLATE COURT OF ILLINOIS

EXCERPT FROM APPELLANT'S BRIEF—Filed March 28, 1935

The only point heretofore raised by the defendants has been that Section 70 of the Administration of Estates Act bars this claim from being enforced against the estate in their hands, because the claim accrued after the one-year limitation period had expired.

Assignments of Error

The claimant, M. J. Pufahl, as receiver of the Austin National Bank of Chicago, alleges that:

(1) The trial court erred in holding that a claim arising under Sections 64 and 66 of the United States Code Annotated Title 12, which accrued after the one-year period for filing claims as established by Section 70 of the Administration of Estates Act, is barred from sharing in inventoried assets.

(2) The court erred in refusing to hold that a claim by the receiver of a national bank for the enforcement of national bank stock liability is not an ordinary claim and is not barred by Section 70 of the Administration of Estates Act from sharing in inventoried assets of the estate of Elvira J. Parks, deceased.

(3) The Circuit Court erred in refusing to hold that Section 70 of the act of the State of Illinois in regard to the

administration of estates, in force January 1, 1872, as amended, is unconstitutional and void in so far as it is construed to bar a claim arising out of an assessment by the comptroller of the currency on shares of stock held by the executors of the estate of Elvira J. Parks, deceased, where the bank failed and the assessment was levied by the comptroller of the currency after the one-year limitation for filing claims against the estate had expired.

[fol. 56] I, Sheldon W. Govier, Clerk of the Appellate Court, in and for the First District of the State of Illinois, and keeper of the records, files and seal thereof, Do Hereby Certify, That the foregoing is a true copy of page three incorporated in Appellant's brief heretofore filed herein in said Appellate Court in the above entitled cause, of record in my office.

In testimony whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 7th day of February, in the year of our Lord one thousand nine hundred and Thirty-six.

Sheldon W. Govier, Clerk of the Appellate Court of the First District, Illinois. (Seal Appellate Court of Illinois, First District.)

[fol. 57] [File endorsement omitted.]

(7456-C)

Stipulation and Addition to Record

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1935

No. 864

M. J. PUFAHL, as Receiver of the Austin National Bank of Chicago, Petitioner,

vs.

Estate of ELVIRA J. PARKS, Deceased

STIPULATION

It is hereby stipulated by and between petitioner, M. J. Pufahl, as Receiver of Austin National Bank, by Otis F. Glenn, his attorney, and respondents, Philip W. Huston and Frank M. Pray, as Executors of Estate of Elvira J. Parks, deceased, by Emmett J. McCarthy, their attorney, that there are inventoried assets in the hands of said executors far in excess of the amount of the claim of petitioner and that said estate is solvent.

It is further stipulated that there are no uninventoried assets discovered subsequent to expiration of one year from granting of Letters Testamentary.

Otis F. Glenn, Attorney for Petitioner. Emmett J. McCarthy, Attorney for Respondents.

[Endorsed:] No. —. Supreme Court of the United States, October Term, 1935. M. J. Pufahl, as Receiver of the Austin National Bank of Chicago, Petitioner, vs. Estate of Elvira J. Parks, Deceased. Stipulation. Law Offices Glenn, Schwartz, Real & Browning, 134 S. La Salle Street, Dearborn 3700, Chicago, Illinois.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 27, 1936

The petition herein for a writ of certiorari to the Appellate Court of the State of Illinois, 1st District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.